

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Tohru FUSHIKI et al.

Serial No.: 09/367, 481

Filed: August 13, 1999

Title: ATHLETIC ENDURANCE INCREASING AGENT IN FOOD



Date: June 27, 2002

Art Unit: 1651

Examiner: Coe, S.

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APPELLANTS REPLY BRIEF

Hon. Commissioner of Patents
Washington, D.C. 20231

Sir:

In response to the Examiner's Answer, appellant presents the following remarks to the new arguments raised by the Examiner in the Answer.

The Examiner's Position on McCarty is Incorrect

McCarty discloses that (-)-hydroxy-citric acid (HCA) may aid aerobic endurance since HCA can promote gluconeogenesis and, because of the gluconeogenesis, glycogen is increased in the liver. As a result, glucose used for exercise is accumulated. This is the Examiner's basis for applying the McCarty citation.

However, those skilled in the pertinent art would have recognized that McCarty's and, hence, the Examiner's viewpoint is scientifically incorrect. This is the case for a number of reasons.

It is well-known to biochemists that citric acid inhibits phosphofructo-kinase which is an enzyme in the glycolytic pathway. Citric acid is the substrate of citrate ATP lyase. Since HCA inhibits the lyase, non-consumed acid will be accumulated. Those skilled in this art would realize that as the concentration of citric acid increases, the body balance would move in the direction of halting the glycolytic pathway. Brunen-graber undoubtedly shows this system.

In general, substances such as HCA which promote gluconogenesis and which stop the glycolytic pathway are advantageous for body builders whose external body form is most important. On the other hand, athletes who require aerobic endurance would not use such substances. Once glucose is stored, it is difficult to be used and cannot contribute to aerobic endurance under the mechanism of such substances.

It is respectfully urged that McCarty's hypotheses cannot be properly used as a basis for rejecting the claims presently on appeal.

The Examiner has failed to give due consideration to the declaration of appellant's expert and has not provided any evidence to support the implied allegation by the Examiner that the expert's factual basis and opinion are incorrect.

CONCLUSION

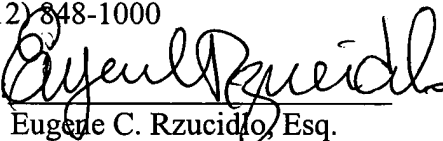
For the reasons given in the appeal brief as amplified herein, appellant urges that the Examiner's rejection should be reverse.

Dated: June 27, 2002

Respectfully submitted,

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